

**Winooski Natural Resource Conservation District  
Agreement With**

**Project:** #9043 Shady Rill Recreation Area Streambank Restoration - Phase 3 Implementation  
("PROJECT")

**Grant Code:** 2019-ERP-IMP-02

**Contract Number:** 2019-ERP-IMP-02 - CONST

**THIS AGREEMENT** is made on \_\_\_\_\_ between the Winooski Natural Resource Conservation District, with its principal place of business at 617 Comstock Rd. Suite 1, Berlin, VT 05602, hereinafter referred to as the **CLIENT** or **OWNER** and \_\_\_\_\_, doing business as (an individual, a partnership or a corporation), with its principal place of business at \_\_\_\_\_, hereinafter referred to as the **CONTRACTOR** or "Party"

**CONTRACTOR Contact Information**

**Business Name:**

**Business Address:**

**POC Name:**

**Phone:**

**Email:**

**CLIENT Contact Information**

Gianna Petito, District Manager

Winooski Natural Resources Conservation District (WNRCD)

617 Comstock Road, Suite 1, Berlin, VT 05602

802-828-4493 x3178 | [gianna@winooskinrcd.org](mailto:gianna@winooskinrcd.org)

**1. Purpose of Agreement**

The purpose of this agreement is to engage the services of CONTRACTOR to furnish all the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of PROJECT.

**2. Scope of Work**

Detailed services and deliverables to be provided by the CONTRACTOR under this agreement are described in Attachment C – Scope of Work

**3. Contract Time**

The period of performance of this agreement is Agreement execution date to November 30, 2020.

**4. Contract Price**

The CLIENT agrees to pay the CONTRACTOR a sum not to exceed \$ [REDACTED]. CONTRACTOR agrees to accept as compensation a sum not to exceed \$ [REDACTED] for the total cost associated with the Scope of Work as described in Attachment C – Scope of Work and as priced in Attachment D - CONTRACTOR Bid Schedule.

### **5. Payment Procedures**

CONTRACTOR may invoice CLIENT up to four times throughout the Contract Time. Invoices shall be submitted for approval to the CLIENT via hard copy or email at contact listed above. Invoices shall be dated, itemized, and must have accompanying receipts. Each invoice shall be accompanied by an Attachment F - Release And Waiver Of Lien Form that follows instructions provided on that form. CLIENT shall retain 10% of invoiced amounts until Attachment E - Certificate of Final Completion and Acceptance of Work is received. Within 30 days of receipt of a completed Attachment E - Certificate of Final Completion and Acceptance of Work, and a final invoice CLIENT shall release any previously retained funds. CONTRACTOR shall pay to its subcontractors, and each subcontractor shall in turn pay to its subcontractors, within seven days after receipt of the retainage, the full amount due to each such subcontractor. Invoice totals shall not exceed Contract Price. CLIENT shall reimburse CONTRACTOR in a timely fashion after receiving an invoice, receipts, release and waiver of lien form, and after receiving funds from the Vermont Department of Environmental Conservation by way of an existing contract (2019-ERP-IMP-02 #9043) between the CLIENT and the Natural Resources Conservation Council. No interest or late fees may be levied on CLIENT as a result of delayed payment. Payment will be based on completion of work and costs incurred as outlined in Attachment C - Scope of Work and Attachment D – CONTRACTOR Bid Schedule. Tasks must be completed and before payment is sought. Payment for services are contingent on verification of satisfactory completion from Watershed Consulting Associates. CONTRACTOR shall only invoice for expenses incurred.

### **6. Contract Terms**

The contract terms and conditions are subject to the completion of work as referenced in Attachment C- Scope of Work. The contract terms and conditions are subject to the provisions referenced in Attachment A - Subcontractor Provisions, and Attachment B - General Provisions.

### **7. Independent Contractor**

CONTRACTOR acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between CLIENT and CONTRACTOR. No employee-related withholdings or deductions shall be made from payments due CONTRACTOR. CONTRACTOR shall not be entitled to receive any benefits from CLIENT and shall not be eligible for workers' compensation or unemployment benefits.

### **8. Indemnification**

CONTRACTOR shall indemnify and hold harmless CLIENT and CLIENT's agents and employees, NRCC and the Vermont DEC from and against all losses and all claims, demands, payments, suits, actions, recoveries, claims of outstanding indebtedness, attorneys fees, liens, and judgments of every nature, and description brought or recovered against them by reasons of any act or omission of the said CONTRACTOR, its agents, employees, or subcontractors, in the

execution of the work or in guarding the same. The CONTRACTOR shall defend the CLIENT and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the CONTRACTOR or of any agent or subcontractor of the CONTRACTOR. The CLIENT shall notify the CONTRACTOR in the event of any such claim or suit, and the CONTRACTOR shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. Nothing in this Contract shall constitute a waiver by the CLIENT of any statutory limits or immunities from liability.

**9. Oversight**

The CONTRACTOR shall complete all work as defined under *Attachment C - Scope of Work* to the satisfaction of the CONSULTING ENGINEER, Bernard Chenette, PE, and CLIENT District Manager.

**10. Certifications**

CONTRACTOR certifies that its financial system is in accordance with generally accepted accounting principles and complies with applicable laws and regulations and that there are no outstanding audit findings which would impact project costs. If there are findings, submit a copy of the report that describes the finding and steps to be taken to correct the finding.

**11. Insurance Requirements**

CONTRACTOR agrees to obtain and maintain in force, insurance levels as outlined in *Attachment B - General Provisions*. CONTRACTOR shall submit a Certificate of Insurance upon Contract execution and as necessary thereafter through the close of the contract term to ensure CLIENT has an updated Certificate of Insurance throughout the course of the PROJECT.

**12. Amendment**

No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the CLIENT and CONTRACTOR. Any additional services shall be approved by both parties in writing in advance of any work being performed. A Change Order Form must be completed to address changes in service or price and the required template is provided in *Attachment E - Change Order Form*.

**13. Cancellation**

Either party may terminate this agreement with 30 days' written notice.

**WE, THE UNDERSIGNED PARTIES, UNDERSTAND AND AGREE TO FULL COMPLIANCE UNDER THE TERMS OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name | Organization

Address

AND

By: \_\_\_\_\_ Date: \_\_\_\_\_

Richmond Hopkins | WNRCD Board of Supervisors, Chair  
Winooski Natural Resources Conservation District  
617 Comstock Road, Suite 1  
Berlin, VT 05602

## **Attachment A - Subcontractor Provisions**

**1. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**2. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 et seq. If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**3. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

### **4. Taxes Due to the State:**

**A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

**B.** Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

**C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

**D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**5. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

**A.** is not under any obligation to pay child support; or

**B.** is under such an obligation and is in good standing with respect to that obligation; or

**C.** has agreed to a payment plan with the Vermont Office of Child Support Services and is in full

compliance with that plan. Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**6. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**7. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**8. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**9. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**10. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

**11. Taxes Due To The State:**

**a.** Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

**b.** Contractor certifies under the pains and penalties of perjury that, as of the date the contract is signed, the Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

**c.** Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Contractor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

**d.** Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor

has no further legal recourse to contest the amounts due.

**12. Child Support:** (Applicable if the Contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract is signed, he/she:

**a.** is not under any obligation to pay child support; or

**b.** is under such an obligation and is in good standing with respect to that obligation; or

**c.** has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Contractor is a resident of Vermont, Contractor makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**13. Subcontractors:** Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph 11 above.

## **Attachment B - General Provisions**

### **1. DEFINITIONS**

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.2 **ADDENDA** Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 **BID** The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 **BIDDER** Any person, firm or corporation submitting a BID for the WORK.

1.5 **BONDS** Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his/her surety in accordance with the CONTRACT DOCUMENTS.

1.6 **CHANGE ORDER** A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 **CONTRACT DOCUMENTS** The contract, including Request For Bids, Information For Bidders, BID, Bid Bond, Agreement and Contract Attachments herein, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 **CONTRACT PRICE** The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 **CONTRACT TIME** The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 **CONTRACTOR** The person, firm or corporation with whom the OWNER has executed the Agreement.

1.11 **DRAWINGS** The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or



approved by the ENGINEER.

1.12 ENGINEER The person, firm or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED Written communication issued by the OWNER to the CONTRACTOR authorizing them to proceed with the WORK and establishing the date of commencement of the WORK.

1.16 OWNER A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

1.17 PROJECT The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.22 SUBSTANTIAL COMPLETION That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance

with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

## 2. ADDITIONAL INSTRUCTION AND DETAIL DRAWINGS

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. Removed

## 4. DRAWINGS AND SPECIFICATIONS

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 Any conflicts between the Contract Documents and Specifications, between Contract

Drawings, and/or site conditions shall be brought to the attention of the ENGINEER in writing immediately upon discovery. The ENGINEER shall promptly make decisions in writing relative to interpretation of the CONTRACT DOCUMENTS WORK done by the CONTRACTOR after his or her discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR's risk.

## 5. SHOP DRAWINGS

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING, which affects the Scope of Work or fee schedule, shall be evidenced by a CHANGE ORDER.

## 6. MATERIALS, SERVICES AND FACILITIES

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Removed

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

## 7. INSPECTION AND TESTING

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 – 7.5 Removed

7.6 The ENGINEER and his/her representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper

facilities for such access and observation of the WORK and also for any inspection or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his/her observation and replaced at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in questions, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

## 8. SUBSTITUTIONS

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalog number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

## 9. PATENTS and COPYRIGHTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. S/he shall defend all suits or claims for infringement of any patent rights and copyrights, and save the OWNER

harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent or copyright, s/he shall be responsible for such loss unless s/he promptly gives such information to the ENGINEER.

## 10. SURVEYS, PERMITS, REGULATIONS

10.1 The ENGINEER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the ENGINEER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, s/he shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, s/he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

10.4 The CONTRACTOR shall regularly check and comply with all federal, state, and local guidelines, rules, and regulations in regard to COVID-19-safe practices bearing on the conduct of the WORK. The CONTRACTOR is required to adjust WORK operations as needed to meet changes to these guidelines, rules, and regulations.

## 11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. S/he will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury

or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. S/he will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. S/he will notify OWNERS of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. S/he will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

## 12. SUPERVISION BY CONTRACTOR

12.1 The CONTRACTOR will supervise and direct the WORK. S/he will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site during any construction activity to perform adequate supervision and coordination of the WORK.

## 13. CHANGES IN THE WORK

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount

due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER may also at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him/her to a change in CONTRACT PRICE or TIME, or both. The CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

#### 14. CONTRACT CHANGE ORDERS

14.1 All changes affecting the Project's construction cost, length of time, or modifications of the terms or conditions of the CONTRACT, must be authorized by means of a written CONTRACT Change Order which is mutually agreed to by the OWNER and CONTRACTOR. The CONTRACT Change Order will include extra WORK, WORK for which quantities have been altered from those shown in the BID Schedule, as well as decreases or increases in the quantities of installed units which are different from those shown in the BID Schedule because of final measurements. All changes must be recorded on a CONTRACT Change Order (which form is part of these CONTRACT Documents) and fully executed before they can be included in a partial payment estimate. Changes for WORK, quantities, and/or conditions will include any respective time adjustment, if justified. Time adjustments will require an updated Project Schedule with the Change Order.

14.2 Removed

14.3 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

- a) Unit prices previously approved, or
- b) An agreed lump sum, or
- c) Time and Materials (T&M) for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the WORK.

#### 15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 The date of beginning and the time for completion of the WORK are essential conditions

of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced immediately after receiving executed Agreement and NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure final completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

## 16. CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR's expense. If the CONTRACTOR does not take action to remove such rejected work within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

## 17. SUBSURFACE CONDITIONS

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if s/he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless s/he has given the



required WRITTEN NOTICE; provided that the OWNER may, if s/he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

## 18. SUSPENSION OF WORK, TERMINATION AND DELAY

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume the WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if s/he makes a general assignment for the benefit of his/her creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his/her property, or if s/he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if s/he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if s/he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if s/he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if s/he disregards the authority of the ENGINEER, or if s/he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his/her surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method s/he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT price exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR's services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and

the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

## 19. PAYMENTS TO CONTRACTOR

19.1-19.2 Removed

19.3 The OWNER shall have the right to enter the premises for the purpose of doing WORK not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.4 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him/her under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR as outlined in the Agreement Payment Procedures.

19.5 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, material-men, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his/her Surety or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

## 20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 Upon final completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him/her under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR-as outlined in the Agreement Payment Procedures.

20.2 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his/her sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND or Payment BONDS.

## 21. INSURANCE

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him/her from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by him/herself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death or his/her employees

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his/her employees

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled.

21.3 INSURANCE REQUIREMENTS. Insurance obtained by the CONTRACTOR to cover the below-listed requirements shall be procured from an insurance company registered and licensed to do business in the State of Vermont. All insurance coverage for property damage shall provide coverage for "Replacement" cost. Before the CONTRACT is signed and becomes effective, the CONTRACTOR shall file with the OWNER a certificate of insurance, executed by an insurance company or its licensed agent(s), on a form satisfactory to the OWNER, stating that with respect to the CONTRACT awarded, the CONTRACTOR carries insurance in accordance with the following requirements. Renewal certificates for keeping the required insurance in force for the duration of the CONTRACT shall also be filed as specified above. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the CONTRACTOR and any SUBCONTRACTOR for the CONTRACTOR'S and any SUBCONTRACTOR'S operations. These are solely minimums that have been established to protect the interests of the OWNER. The CONTRACTOR shall procure and maintain, at his/her own expense, during the CONTRACT TIME, insurances as hereinafter specified:

21.3.1 Workers Compensation Insurance. With respect to all operations performed the CONTRACTOR shall carry Workers Compensation Insurance in accordance with the laws of the State of Vermont, 21 V.S.A. Chapter 9. The CONTRACTOR shall also ensure that all SUBCONTRACTORS carry Workers Compensation Insurance in accordance with 21 V.S.A. Chapter 9 for all work performed by them.

21.3.2 Commercial General Liability Insurance. With respect to all operations performed by the CONTRACTOR and SUBCONTRACTORS, the CONTRACTOR shall carry Commercial General Liability Insurance on an occurrence form providing all major divisions of coverage, including but not limited to:

Premises - Operations  
Independent CONTRACTOR's Protective  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability

CONTRACTOR's General Liability and Property Damage Insurance will be obtained by the CONTRACTOR protecting him/her from all claims for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any

operations under the CONTRACT DOCUMENTS, whether such operations be by him/herself or by any SUBCONTRACTOR under him/her, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him/her. Contractual Liability applying to the CONTRACTOR'S obligations, unless this requirement is waived in writing by the OWNER, shall have Limits of Coverage not less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate applying, in total to this project only

\$1,000,000 Products/Completed Operations Aggregate

\$ 250,000 Fire Damage Legal Liability

\$1,000,000 Personal and Advertising Injury

21.3.3 Automobile Liability Insurance. The CONTRACTOR shall carry Automobile Liability Insurance covering all motor vehicles, including owned, hired, borrowed, and non-owned vehicles, used in connection with the project. Limits of Coverage shall be not less than:

Bodily Injury: \$1,000,000 Each Person, \$1,000,000 Each Occurrence

Property Damage: \$ 500,000 Each Occurrence, OR

Combined Single Limit: \$500,000 Each Occurrence

21.3.5 General Insurance Conditions. The insurance specified under paragraphs 21.3.1, 21.3.2, and 21.3.3 above shall be maintained in force until acceptance of the project by the OWNER. Under paragraph 21.3.2 above, Products and Completed Operations Coverage shall be maintained in force for at least one year from the date of acceptance of the project. The contractual liability insurance requirements detailed in the Contract Documents are to indemnify, defend, and hold harmless the OWNER, as applicable, and their officers, agents, representatives, and employees, with respect to any and all claims, causes of actions, losses, expenses, or damages that arise out of, relate to, or are in any manner connected with the CONTRACTOR'S work or the supervision of the CONTRACTOR'S work on this project. Each policy, except the Workers Compensation Policy, shall name the OWNER, as additional insured for actions, losses, expenses or damages that arise out of, relate to, or are in any manner connected with the CONTRACTOR'S work or the supervision of the CONTRACTOR'S work on this project. Umbrella Excess Liability Policies may be used in conjunction with primary policies to comply with any of the limit requirements specified above. "Claims-made" coverage forms are not acceptable without the prior written consent of the OWNER. The CONTRACTOR shall investigate, and the CONTRACTOR and/or insurance company shall either adjust or defend all claims against the insured for damages covered, even if groundless. Each policy furnished shall contain a rider or non-cancellation clause reading in substance as follows:

Anything herein to the contrary notwithstanding, no cancellation, termination, or alteration of

this policy by the company or the assured shall become effective unless and until notice of cancellation, termination, or alteration has been given by registered mail to the OWNER, at least 30 calendar days before the effective cancellation, termination, or alteration date unless all work required to be performed under the terms of the CONTRACT is satisfactorily completed as evidenced by the formal, final acceptance of the project by the OWNER. There shall be no directed compensation allowed the CONTRACTOR on account of any premium or other charge necessary to take out and keep in effect such insurance or bond; the cost thereof shall be considered included in the general cost of the work.

21.3.6 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain, at his/her own expense, during the CONTRACT TIME, in accordance with the provision of the laws of the state in which the WORK is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his/her employees at the site of the PROJECT and in case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous WORK under this CONTRACT at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause, each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

21.5 The CONTRACTOR shall secure "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, water and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

## 22. CONTRACT SECURITY

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance BOND and a Payment BOND in penal sums

equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

## 23. ASSIGNMENTS

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his/her right, title or interest therein, or his/her obligations hereunder, without written consent of the other party.

## 24. INDEMNIFICATION

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting there from; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of the may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other

employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his/her agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, design or SPECIFICATIONS.

## 25. SEPARATE CONTRACTS

25.1 The OWNER reserves the right to let other CONTRACTS in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his/her WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by him/herself or s/he may let other CONTRACTS containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS, who are parties to such CONTRACTS (for the OWNER, if s/he is performing the additional WORK him/herself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his/her WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, WRITTEN NOTICE thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him/her in additional expense or entitles him/her to an extension of the CONTRACT TIME, s/he may make a claim therefore as provided in Section 14 and 15.

## 26. SUBCONTRACTING

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall provide written notification to the OWNER within 30 working days of the CONTRACTOR's intent to employ SUBCONTRACTOR(s) on site. The



notification shall list the firm name, point of contact name, address and telephone number, and scope of services to be provided by SUBCONTRACTOR(s); estimated dollar amounts of SUBCONTRACT(s); estimated start and completion dates of the SUBCONTRACTOR(s) work. CONTRACTOR must secure written approval from OWNER prior to subcontracting with any specific entity.

26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his/her SUBCONTRACTORS and of persons whether directly or indirectly employed by them, as s/he is for the acts and omissions of persons directly employed by him/her.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

26.6 All subcontracts between the CONTRACTOR and his/her subcontractors shall include the language available in Attachment A – Subcontractor Provisions of the CONTRACT DOCUMENTS.

## 27. ENGINEER'S AUTHORITY

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period. S/he shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. S/he shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions in writing relative to interpretation of the CONTRACT DOCUMENTS.

## 28. LAND AND RIGHTS OF WAY

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The ENGINEER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his/her own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

## 29. GUARANTEE

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one, (1) year from the date of FINAL COMPLETION OF THE PROJECT or specified part, as appropriate. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of FINAL COMPLETION OF THE PROJECT or specified part, as appropriate, that the completed project is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the project resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

## 30. TAXES

30.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

## 31. SUPPLEMENTAL GENERAL CONDITIONS

### 31.1. PERMITS:

Federal, State and local permits apply to the performance of WORK under this CONTRACT:

1. Stream Alteration General Permit
2. Flood Hazard and River Corridor Rule General Permit
3. Construction General Permit
4. Section 408 Permit

### **Attachment C - Scope of Work**

The CONTRACTOR will furnish all the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of restoring the banks of Martins Brook within the Shady Rill Recreation Area of Middlesex, VT – as outlined in 100% Design Bid Plans developed by Watershed Consulting Associates.

Construction must follow specifications outlined in the 100% Design Bid Plans unless otherwise directed by Bernard Chenette, PE through processes defined in Attachment B – General Provisions. Plans are available as *Attachment 1-100% Design Bid Plans* at [www.winooskinrcd.org/shadyrillpicnic](http://www.winooskinrcd.org/shadyrillpicnic). Construction will exclude coir log installation and final landscaping but otherwise will include all other components of 100% Design Bid Plans including but not limited to:

1. Relocate all encroachment features including up to four grilling sites and one shelter structure.
2. Remove existing access drive and install new 12' wide gravel drive in new location outside of stream buffer zone. Install new parking spaces and vehicle turnaround location.
3. Reconfigure paved drive entrance and install boulders at specific locations to direct vehicle traffic.
4. Install four hardened access paths and three sets of stone steps into Martins Brook.
5. Regrade and bench streambank in preparation for coir roll installation. Place down erosion control blankets and seed banks to overwinter.

The CONTRACTOR is expected to join a mandatory pre-construction site visit with the consulting engineer after AGREEMENT is executed during which time construction components will be further outlined. The CONTRACTOR will be provided construction oversight by Watershed Consulting Associates who will verify completion of the project. Construction also must follow all permit conditions for permits listed under *Attachment B - General Provisions*.

The CONTRACTOR will commence work after the pre-construction site visit and after receiving a written Notice to Proceed from CLIENT. CONTRACTOR will complete all work by November 1, 2020. This shall be referred to as the CONTRACT TIME. The CONTRACTOR acknowledges that the date of beginning and the time for completion of the WORK are essential conditions.

**Attachment D –CONTRACTOR Bid Schedule**

**Attachment E - Change Order Form**

**CHANGE ORDER # \_\_\_\_\_**

Owner's Project Number: #9043 Shady Rill Recreation Area Streambank Restoration - Phase 3  
Implementation

Date: \_\_\_\_\_

Contract #: 2019-ERP-IMP-02 - CONST

ORIGINAL PRICE: \$ \_\_\_\_\_

Owner: Winooski NRCD \_\_\_\_\_

Notice to Proceed Date: \_\_\_\_\_

Contractor: \_\_\_\_\_

Calendar Days: 60

Engineer: Watershed Consulting Associates \_\_\_\_\_

Original Completion Date: \_\_\_\_\_

**The following changes are hereby made to the CONTRACT DOCUMENTS:**

**DESCRIPTION:**

**JUSTIFICATION:**

PRICE: This C.O.<sup>(1)</sup> will (not change/increase/decrease) the Contract Price By: \$ \_\_\_\_\_  
Current Contract Price per most recent C.O.: \$ \_\_\_\_\_  
The new Contract Price including this C.O. is: \$ \_\_\_\_\_

TIME: Current Contract Calendar Days as per most recent C.O.: Calendar Days \_\_\_\_\_  
This C.O. will (not change/increase/decrease) the Contract Calendar Days by:  
Calendar Days \_\_\_\_\_  
The new Contract Calendar Days including this C.O. is:  
Calendar Days \_\_\_\_\_  
The new Contract Completion Date is, therefore: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_  
Print or Type Name Signature

**SIGNATURES/APPROVALS:**

Stipulated price and time adjustment includes all costs and time associated with the above described change. CONTRACTOR waives all rights for additional compensation or time

extension for said change. CONTRACTOR and OWNER agree that the price(s) and time adjustment(s) stated above are equitable and acceptable to both parties.

Recommended By (Engineer): \_\_\_\_\_  
Print or Type Name Signature

Accepted By (CONTRACTOR): \_\_\_\_\_  
Print or Type Name Signature

Ordered By (OWNER): \_\_\_\_\_  
Print or Type Name Signature

**Attachment F. Certificate of Final Completion and Acceptance of Work**  
**CERTIFICATE OF FINAL COMPLETION AND ACCEPTANCE OF WORK**

CONTRACT NO. 2019-ERP-IMP-02 - CONST

Completion Date per Agreement and Change Orders # \_\_thru # \_\_\_\_\_: \_\_\_\_\_  
(Date)

**FINAL CERTIFICATION OF CONTRACTOR**

I hereby certify that the WORK as identified in the Final Estimate of Payment for construction CONTRACT WORK dated \_\_\_\_\_, represents full compensation for the actual value of WORK completed. All WORK completed conforms to the terms of the AGREEMENT and authorized changes.

---

CONTRACTOR	Signature
Date	Print or Type Name
	Title

**FINAL CERTIFICATION OF ENGINEER**

I have reviewed the CONTRACTOR'S Final Payment Request dated \_\_\_\_\_ and hereby certify that to the best of my knowledge, the cost of the WORK identified on the Final Estimate represents full compensation for the actual value of WORK completed and that the WORK has been completed in accordance with the terms of the AGREEMENT and authorized changes. This certification is provided in accord with the terms of GENERAL CONDITION number 20.1.

---

ENGINEER	Signature
Date	Print or Type Name

**FINAL ACCEPTANCE OF OWNER**

I, as representative of the OWNER, accept the above Final Certifications and authorize Final Payment in the amount of \$\_\_\_\_\_ and direct the CONTRACTOR'S attention to the GENERAL CONDITION #19. The guaranty for all WORK completed subsequent to the date of SUBSTANTIAL COMPLETION, expires one (1) year from the date of this Final Acceptance.



---

OWNER

Signature

---

Date

Print or Type Name

---

Title

**Attachment G. Release and Waiver of Lien Form**

**INSTRUCTIONS FOR CONTRACTORS OR SUBCONTRACTORS**

**RELEASE AND WAIVER OF LIEN FORM**

1. At the preconstruction meeting, the OWNER will receive from the CONTRACTOR a list of all major items (s)he intends to subcontract.
2. The CONTRACTOR shall include in the payment package a Release of Lien Form for the overall CONTRACT and those of any SUBCONTRACTORS or vendors. Note that 40 CFR §33.302 requires CONTRACTOR to pay their SUBCONTRACTORS for satisfactory performance within 30 days of payment to CONTRACTOR by OWNER.
3. For all interim payments prior to 100% completion of the CONTRACT, the CONTRACTOR may delete, "...the undersigned does hereby waive, release and relinquish any and all claims, demands and rights of lien for all work, labor, materials, machinery or other goods, equipment or services done, performed or furnished..." from the first statement.
4. Final payment requires complete wording in the first statement and a fully executed form.

**GENERAL CONTRACTOR'S OR SUBCONTRACTOR'S**

**RELEASE AND WAIVER OF LIEN**

For and in consideration of the receipt of \$\_\_\_\_\_, in payment for labor and/or materials furnished, the undersigned does hereby waive, release and relinquish any and all claims, demands and rights of lien for all work, labor, materials, machinery or other goods, equipment or services done, performed or furnished for the construction located at the site hereinafter described, to wit:

#9043 Shady Rill Recreation Area Streambank Restoration - Phase 3 Implementation  
Winooski NRCD

\_\_\_\_\_  
(Project Name and OWNER)

Located in Middlesex, Vermont as of \_\_\_\_\_  
(Date)

The undersigned further warrants and represents that any and all valid labor and/or materials and equipment bills, now due and payable on the property herein above described in behalf of the undersigned, have been paid in full to date of this waiver, or will be paid from these funds.

Total Paid to Date This Contract: \_\_\_\_\_

Current Payment Due: \_\_\_\_\_

Total Billed to Date This Contract: \_\_\_\_\_

CONTRACTOR/Sub-CONTRACTOR signature: \_\_\_\_\_